

**UNITED STATES DISTRICT COURT  
DISTRICT OF OREGON**

**CIVIL MINUTES**

**Case No.:** 3:13-cv-00492-MO

**Date of Proceeding:** May 16, 2014

**Case Title:** Edge Lofts Master Condominium Association et al. v. Victaulic Company v. Seal Dynamics and F&S Distributors (Third-Party Defendants).

**Presiding Judge:** Hon. Michael W Mosman

**Courtroom Deputy:** Dawn Stephens  
Dawn\_Stephens@ord.uscourts.gov  
Telephone number (503) 326-8024

**Reporter:** Nancy Walker

**Tape No:** \_\_\_\_\_

**DOCKET ENTRY:** RECORD OF PRETRIAL CONFERENCE:

**SUMMARY JUDGMENT**

Motions for summary judgment discussed on the record. Defendant Victaulic's Motion for Summary Judgment [139] is GRANTED as to Plaintiff's claim for breach of express warranty, as stated on the record. Third-Party Defendant Seal Dynamics's Motion for Summary Judgment [132] is GRANTED in part and DENIED in part: the motion is GRANTED as to claims for breach of express warranty, implied warranty of merchantability, and implied warranty of fitness for a particular purpose; the motion is DENIED as to claims for strict products liability, negligence, contribution, and indemnity.

**MOTIONS IN LIMINE**

ORDER GRANTING in part and DENYING in part Plaintiffs' Motions in Limine [235]. Motion in limine No. 1 is GRANTED in part and DENIED in part as stated on the record; No. 2 is DENIED with leave to renew if expert is not deposed before trial; No. 3 is GRANTED as stated on the record; No. 4 is DENIED as stated on the record: Defendant Victaulic's 30(b)(6) witnesses are to be called during Plaintiffs' case in chief and will be examined by all parties at that time; No. 5 is GRANTED as to limiting witnesses' testimony to the scope of their depositions and DENIED as to privilege and work product; No. 6 is DENIED with leave to renew as to any improper statements raised in testimony.

ORDER GRANTING in part and DENYING in part Defendant Victaulic's Motions in Limine [245]. Motion in limine No. 1 is DENIED; No. 2 is GRANTED in part and DENIED in part as stated on the record; No. 3 is GRANTED in part and DENIED in part, such that evidence related to other buildings should be limited as much as possible; No. 4 is DENIED; No. 5 is GRANTED as stated on the record; No. 6 is DENIED as stated on the record; No. 7 is DENIED as stated on the record; No. 8 is DENIED as stated on the record; No. 9 is GRANTED as to any expert opinion regarding health effects, DENIED as to explanation of business decision to replace products; No. 10 is GRANTED; No. 11 is GRANTED, evidence and argument is limited to those claims that remain after summary judgment; No. 12 is DENIED; No. 13 is GRANTED subject to the ruling on Plaintiffs' Motion in Limine No. 1; No. 14 is GRANTED; No. 15 is GRANTED; No. 16 is GRANTED as stated on the record; No. 17 is GRANTED

as stated on the record, Plaintiffs may put on evidence of the actual costs of repair; No. 18 is GRANTED; No. 19 is GRANTED as stated on the record.

ORDER GRANTING in part and DENYING in part Third-Party Defendant Seal Dynamics's Motions in Limine [225]. No. 1, motion for joinder, is GRANTED; No. 2 is GRANTED pursuant to the grant of summary judgment for Seal Dynamics on breach of warranty claims; No. 3 is DENIED as stated on the record; No. 4 is GRANTED as stated on the record; No. 5 is DENIED with leave to renew, as stated on the record; No. 6 is GRANTED; No. 7 is GRANTED in accordance with the Court's ruling on Plaintiff's Motion in Limine No. 1; No. 8 is GRANTED in connection with Defendant's Motion in Limine No. 11; No. 9 is GRANTED; No. 10 is GRANTED; No. 11 is GRANTED in accordance with Defendant's Motion in Limine No. 19; No. 12 is DENIED with leave to renew as to particular pleadings; No. 13 is GRANTED in accordance with Defendant's Motion in Limine No. 11; No. 14 is GRANTED; No. 15 is GRANTED; No. 16 is GRANTED in part and DENIED in part in accordance with the Court's ruling on Defendant's Motion in Limine Nos. 7 & 8.

ORDER GRANTING in part and DENYING in part Third-Party Defendant F&S Distributors's Motions in Limine [224]. No. 1 is GRANTED subject to the Court's ruling on Plaintiff's Motion in Limine No. 1; No. 2 is GRANTED as stated on the record; No. 3 is GRANTED in part and DENIED in part according to the Court's ruling on Defendant's Motion in Limine No. 3; No. 4 is GRANTED as stated on the record; No. 5 is GRANTED in accordance with Defendant's Motion in Limine No. 11; No. 6 is GRANTED in accordance with ruling on Defendant's Motion in Limine No. 19; No. 7 is GRANTED as stated on the record; No. 8 is DENIED in accordance with Defendant's Motion in Limine No. 12; No. 9 is GRANTED; No. 10 is DENIED as stated on the record: all products may be the subject of the products liability and negligence claims, but the fact of subsequent modification may not be used to argue negligence or fraud; No. 11 is GRANTED in accordance with rulings on Defendant's Motion in Limine No. 8.

## **WITNESS STATEMENTS**

Plaintiff's objection to Third-Party Defendant F&S Distributors's witness Mr. Sennert WITHDRAWN.

Any additional objections to witness statements remaining in light of the Court's rulings on motions in limine and *Daubert* motions to be raised and resolved at trial.

## **EXHIBITS**

Objections to exhibits remaining in light of the Court's rulings on motions in limine to be raised and resolved at trial. The parties are directed to submit revised exhibit lists that conform to the Court's rulings on motions in limine and a joint list of exhibits to be pre-admitted (based on such rulings) by 5:00 p.m. on May 22, 2014. (As stated on the record, agreement that an exhibit is pre-admitted pursuant to rulings on motions in limine does not waive the objection(s) to that exhibit raised by way of the motions in limine.)

## **ADDITIONAL MATTERS**

Jury selection and trial management discussed.

Pursuant to the Court's ruling on Plaintiffs' Motion in Limine No. 4, Defendant Victaulic's 30(b)(6) witnesses are to be available on Wednesday, May 28, 2014 and Thursday, May 29, 2014 to testify as part of all parties' cases in chief.

The parties consent to allowing jurors to discuss the case amongst themselves (pursuant to the instructions stated on the record). The parties consent to waive the Court's reading of the jury instructions if the jurors are instructed to read them and confirm on the record that they have done so.

Plaintiff's Motion for Reconsideration [177] is DENIED, as stated on the record.

The parties are instructed to be here at 8:45 a.m. in Courtroom 16 on the Sixteenth Floor. The trial will commence Tuesday, May 27, 2014, at 9:00 a.m.

**PLAINTIFF'S COUNSEL**

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Jim Crane

Stuart K. Cohen

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Anne Cohen

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cc: { } All counsel

**DOCUMENT NO:** \_\_\_\_\_